

111722

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

ORIGINAL  
DEPARTMENT OF TRANSPORTATION  
DOCKETS

00 SEP 22 PM 4:08

Supplemental Advance Notice of  
Proposed Rulemaking  
  
Computer Reservation System (CRS)  
Regulations  
  
14 C.F.R. Part 255

Docket OST-97-2881-140  
97-3014-9  
98-4775-55

COMMENTS OF BRITISH AIRWAYS

Communications with respect to this document should be addressed  
to:

Anthony Fortnam  
Vice President, Government  
and Industry Affairs, N.A.  
BRITISH AIRWAYS PLC  
1850 K Street, N.W.  
Suite 300  
Washington, DC 20006  
202-331-9068

Paul C. Jasinski  
General Counsel, Americas  
James B. Blaney  
Senior Counsel, Americas  
BRITISH AIRWAYS PLC  
75-20 Astoria Blvd.  
Jackson Height, NY 11370  
718-397-4250

Don H. Hainbach  
BOROS & GAROFALO, P.C.  
1201 Connecticut Avenue, N.W.  
Washington, DC 20036  
202-822-9070

Attorneys for  
BRITISH AIRWAYS PLC

September 22, 2000

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

Supplemental Advance Notice of	)	
Proposed Rulemaking	)	
	)	
Computer Reservation System (CRS)	)	Docket OST-97-2881
Regulations	)	97-3014
	)	98-4775
14 C.F.R. Part 255	)	
	)	

**COMMENTS OF BRITISH AIRWAYS**

British Airways welcomes the opportunity to comment on the Department's Supplemental Advance Notice of Proposed Rulemaking (SANPRM) regarding Computer Reservation Systems (CRSs).

The Department should adhere to three principles when considering whether and/or how to modify the existing CRS regulations. First, the developments during the last two years reinforce the position, stated in British Airways' comments responding to the initial September 1997 ANPRM, that the Department should refrain from expanding the existing regulations to new technologies and distribution alternatives unless and until there is a demonstrated and well documented need. Second, the Department should note the new regulatory regimes -- e.g. the EC Code of Conduct for CRSs -- that have been enacted since 1997 and should ensure that any new U.S. regulations are generally

consistent. Third, there is no basis for regulating web sites operated individually by single airlines or jointly by affiliated or allied carriers.

The Department Should Exercise Caution Before Imposing New Regulatory Requirements on Internet Distribution

When the Department last readopted the CRS regulations on September 22, 1992, the preamble to the final rule did not include any reference to the internet. Five years later, when the Department issued its September 10, 1997 ANPRM, it noted that "while the use of [internet booking] services is growing rapidly, consumers make relatively few bookings through this service." The Department's 1997 observation that internet booking was growing rapidly has proven accurate. Today, barely three years later, headlines report that:

- 11 million people currently book travel online, with millions more poised to make their first online purchase.<sup>1</sup>
- Last year, U.S. consumers booked \$6.5 billion of travel online, nearly triple the figure for 1998.<sup>2</sup>
- Total U.S. online airline revenues will be \$8.7 billion this

---

<sup>1</sup> "PhoCusWrightReports 3% of Travel Now Booked Online," Webtravelnews.com, December 15, 1999.

<sup>2</sup> "Consumers to Get Airsick?" CNNfn.com, June 9, 2000.

year, about 9 percent of total air travel.<sup>3</sup>

The growth since 1992, when internet bookings did not even register on the radar screen, to 1997 when internet bookings were just beginning, to today, when the internet represents a significant and still rapidly expanding distribution channel has been nothing short of phenomenal. That growth has resulted in substantial price and service benefits to consumers. No one knows how technological advances will affect transportation distribution channels. What is clear is that premature and possibly unnecessary regulation could have the unintended consequence of limiting potential additional consumer benefits. For that reason British Airways reiterates its 1997 recommendation that any new regulations not be made applicable to new technologies and distribution alternatives unless and until there is a well demonstrated need.

The U.S. CRS Regulations Should be Generally Consistent With Existing Regulatory Regimes

Air transportation distribution today is truly global. CRS's, as well as internet distribution channels, are world-wide entities crossing national boundaries. Governments must ensure that national regulations do not impose inconsistent and/or

---

<sup>3</sup> "2 Travel Sites Take the Road Less Traveled By," biz.yahoo.com, September 6, 2000.

conflicting requirements. Otherwise consumers would be impeded in their enjoyment of the seamless borderless travel they demand.

As noted above, the European Community recently adopted a new Code of Conduct for CRSs. Canada also regulates CRS operations. British Airways does not necessarily endorse each and every element of these regulations. However, given that they already are effective and apply to the same carriers and CRSs that would be subject to the requirements that would be imposed pursuant to any new U.S. regulations, the Department should ensure that any new U.S. regulatory requirements are consistent. Ideally, the Department should coordinate with the EC and other aviation authorities to develop a uniform code. At the least, the Department should ensure that any new U.S. requirements harmonize with those of other governmental bodies.

#### Carrier Web Sites Should Not be Covered

The SANPRM notes that the Department does not have unfettered legal authority to regulate airline distribution services.

Moreover, section 411 does not give us the authority to determine how airline services should best be distributed. Since airline deregulation began twenty years ago, the airlines have been generally free to determine how to distribute and sell their services, including sales through travel agencies. This result is consistent with the antitrust laws, which generally

allow individual firms to choose how to distribute their products and services. (65 Fed. Reg. 45554)

The foregoing favors policy goals which do not needlessly require intrusive regulation of carrier and alliance web sites. The 1997 ANPRM noted that individual carrier web sites do not hold themselves out as unbiased sources of information and on-line consumers are well accustomed to this. The same is true with respect to web sites operated by alliances of affiliated carriers. The growing sophistication of consumers and their increasing familiarity with internet and web commerce should not be underestimated. Just as a passenger calling an airline 800 number understands that the emphasis will tend to booking on that carrier (assuming it offers the desired service), a passenger accessing a web site identified to an individual carrier or carrier alliance well understands that flights on the proprietor carrier(s) will receive top billing.

With good reason, the Department has not attempted to regulate carrier 800 numbers or internal carrier reservation systems. Similarly, there is no basis for regulating individual carrier or alliance web sites. Nor is there any basis for restricting carriers' ability to offer exclusive fares on those web sites.

## Conclusion

Since 1984 the Department and the Civil Aeronautics Board before it appropriately restricted CRS excesses while avoiding unnecessary interference in airline distribution practices. British Airways urges the Department to continue that proven approach by (1) declining to expand the reach of the existing regulations to new technologies and distribution alternatives unless and until there is a demonstrated and well documented need, (2) ensuring that any new U.S. regulations are generally consistent with existing requirements imposed by the EC and other national governments, and (3) refraining from regulating web sites operated individually by single airlines or operated jointly by affiliated or allied carriers.

Respectfully submitted



Don H. Hainbach  
BOROS & GAROFALO, P.C.  
1201 Connecticut Avenue, N.W.  
Suite 550  
Washington, DC 20036

Attorney for  
BRITISH AIRWAYS PLC